

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 11TH APRIL 2007 / 21ST CHAITHRA 1929

WP(C) .No. 36604 of 2004 (G)

PETITIONER:

SHOUKATH, S/O.MUHAMMED KUNJU,
M.R.MANZIL, VENGAL P.O. SASTHAMCOTTA, KOLLAM DIST.

BY ADV. SRI.B.MOHANLAL
SMT.MEREENA JOSEPH

RESPONDENTS:

1. STATE OF KERALA, REP. BY THE SECRETARY,
CO-OPERATION, SECRETARIAT, THIRUVANANTHAPURAM.
2. THE BOARD OF DIRECTOR OF KOLLAM DISTRICT
CO-OPERATIVE BANK REP. BY ITS PRESIDENT,
CHINNAKKADA, KOLLAM.
3. THE KOLLAM DISTRICT CO-OPERATIVE BANK
REP. BY ITS GENERAL MANAGER, CHINNAKKADA, KOLLAM.
4. THE DISTRICT OFFICER, KERALA PUBLIC
SERVICE COMMISSION, KOLLAM.
5. THE SECRETARY, KERALA PUBLIC SERVICE
COMMISSION, PATTOM, THIRUVANANTHAPURAM.
6. MUHAMMED SHIJU, VADAKKEKKALAVARA,
PUNNTHALA, THIRUMULLAVARAM P.O. KOLLAM.
7. MINI.S.VETTIKULANGARA, MISSION COMPOUND,
ASRAMAM P.O. KOLLAM.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
SRI.P.B.SURESHKUMAR, SC, KOLLAM DC BANK
GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29/03/2007 A/W WPC NO. 27491 OF 2005 AND CONNECTED
CASES THE COURT ON 11.4.2007 DELIVERED THE FOLLOWING:

W.P(C).No. 36604/04.

APPENDIX

PETITIONER'S EXHIBITS:

- P1. COPY OF THE DAILY WAGE/CONTRACT BASIS WORKERS OF THE BANK.
- P2. COPY OF THE ORDER IN W.P.C.NO.24299/04 DTD.2.11.04 OF THIS COURT.
- P3. COPY OF THE ORDER DTD.6.5.2001 BY R1.
- P4. COPY OF THE ORDER DTD.19.5.2001 BY JOINT REGISTRAR, KOLLAM.

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P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C) .Nos.36604/2004, 27491/2005,
1936/2006 and 11681/2007

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Dated this the 11th day of April, 2007

J U D G M E N T

The first three out of the above four writ petitions are filed by persons included in the rank list dated 31.1.2003 published by the Public Service Commission for appointment to the post of Peon/watchman in the Kollam District Co-operative Bank, challenging the promotion of part time sweepers to the vacancies which arose prior to 18.11.2003 on which date only by Ext.P4 Government order, Appendix III of the Kerala Co-operative Societies Rules were amended including Part Time/Contingent employees in the staff pattern of Central Co-operative Banks so as to enable the Bank to include Part time/Contingent employees as feeder category for promotion to the post of Peon/Watchman. The fourth writ petition is filed by

the 9th respondent in the other writ petition (which was filed after the other three writ petitions were heard and judgment reserved) challenging the notification dated 26.10.1999 issued by the PSC, pursuant to which the rank list dated 31.1.2003 was prepared, to the extent it stipulates that candidates from the rank list would be advised against vacancies which may arise during the currency of the list although only 20 vacancies were mentioned in the notification. I shall consider this writ petition separately in the end after disposing of the other three.

2. The facts necessary for disposal of these writ petitions may be adverted to as under, as available in W.P(C).No. 27491/2005 which is treated as the leading case.

3. By virtue of an amendment made to the Special Rules of the Kollam District Co-operative Bank, the 3rd respondent, the method of recruitment to the post of Peon/Watchman was fixed as by direct recruitment, which amendment came into effect from

30.11.1998 (Ext.P1). By Ext.P2 resolution dated 10.4.1999, of the Board of Directors of the Bank it was resolved to include sweepers having educational qualification of 7th standard with 7 years' uninterrupted service in the feeder category for promotion to the post of Peons/Watchers. Joint Registrar of Co-operative Societies refused to approve the said resolution against which the bank filed appeal before the 1st respondent Government. By Ext.P3 order dated 31.10.2000, the Government set aside the order of the Joint Registrar and held that in order to promote eligible hands from among part time contingent employees of District Co-operative Banks to the post of Peon/watchman, the question of making necessary provision in the relevant feeder category Rules may be considered.

4. In the meantime, the Public Service Commission published a rank list of candidates for appointment to the post of Peon/Watchman by direct recruitment on 31.1.2003, pursuant to notification dated 26.10.1999 inviting applications for the said

post in Co-operative Banks in various Districts including the 3rd respondent Bank. While so, on 30.12.2002 (Ext.P5), 14.10.2003 (Ext.P6) and 30.10.2003 (Ext.P7) respondents 5 to 12 were promoted to the post of Peon/Watchman in the bank.

5. It is while all these were going on, the Government, by Ext.P4 Government order dated 18.11.2003, the Government amended Appendix III of the Kerala Co-operative Societies Rule including Part time/Contingent employees also in the staff pattern of Central Co-operative Banks.

6. Respondents 13 to 18 were also promoted by the 3rd respondent as Peons/Watchmen after the coming into force of the amendment on 18.11.2003.

7. The petitioners are challenging the promotion given to respondents 5 to 18 on the ground that they are not eligible for such promotion and the petitioners should be advised to the posts occupied by them after reverting them, although they would not seriously press their challenge against the appointment of respondents 13

to 18 since they were actually promoted subsequent to Ext.P4 amendment.

8. The challenge is on the ground that prior to the amendment of Appendix III to the Rules by Ext.P4 Government order, the post of Part time/Contingent Employees were not included in the staff pattern of the Co-operative Societies, without which no feeder category Rules could be framed including them in the feeder category for promotion to the post of Peon/Watchman. Therefore, any promotion made prior to the date of Ext.P4 amendment, to the post of Peon/Watchman are against the Rules and are liable to be set aside. They would consequently seek reversion of respondents 5 to 18 as part time/contingent employees and filling up of the resultant vacancies by advising candidates from the rank list dated 31.1.2003 as against the vacancies reported pursuant to orders of this court. The petitioners also rely on Ext.P9 judgment in W.P(C).No.13396/2005 rendered by a Single Judge in respect of the Palakkad District

Co-operative Bank in exactly identical circumstances quashing similar promotions, which decision was upheld by the Division Bench by Ext.P10 judgment in W.A.No.1818/2005.

9. The third respondent Bank supports the promotion of respondents on the ground that Ext.R3 (a) Service Regulations of the Part Time Contingent Employees of the Apex Co-operative Bank & District Co-operative Banks of the State has been approved by the Government by G.O(Ms) 40/89/co-op dated 31.1.1989 and G.O(Ms).36/91/Co-op. dated 11.4.91 which was adopted by the Bank by Board Resolution No.106 dated 31.12.1991 and therefore, Part Time Contingent Employees have been accepted as part of the staff pattern of the Bank and therefore there is nothing wrong in including them as feeder category for promotion as Peon/Watchman. The 3rd respondent Bank therefore would justify the promotions given to respondents 5 to 13.

10. The respondents 5 to 12 and 18 have filed a joint counter affidavit and would challenge

the very locus standi of the petitioners to challenge their promotion. According to them, by the notification dated 26.10.1999 [Ext.R5(e)] applications were invited to only 20 vacancies and those vacancies have already been filled up by candidates from the rank list prepared in accordance with the notification. They would submit that in fact 24 vacancies have been filled up by candidates from the list and none of those vacancies are occupied by respondents 5 to 18. They would also rely on Ext.R5(a) decision of this court in which this court had recorded the submission of the Bank that the vacancies which are reported to the PSC would not be filled up by promotion. They also rely on the decisions of Retnamma v. KPSC (1977 KLT 290), Rajesh v. Union of India (2002 [1] KLT 492), and Virender Singh Hooda and others v. State of Haryana and another (AIR 2005 SC 137) in support of their contentions.

11. I have considered the rival contentions in detail.

12. It is an admitted fact that till Ext.P4 Government order dated 20.11.2003, amending Appendix III of the Kerala Co-operative Societies Rules, there was no post of Part Time/Contingent Employees as per the staff pattern approved by the Rules for the District Co-operative Societies. Therefore, till 20.11.2003, no feeder category Rules could have been made by the District Co-operative Banks in Kerala prescribing the post of Part time/Contingent employees as feeder category to any of the posts in the District Co-operative Banks. The respondents also have no case that Ext.P4 amendment is retrospective in operation, either expressly or by implication. This is exactly what has been held in Ext.P9 judgment as upheld in Ext.P10 judgment of the Division Bench, in respect of the District Co-operative Bank, Palakkad. In view of those judgments, I cannot take a different stand in this writ petition based on exactly identical fact situation in those judgments, as the Division Bench judgment is binding on me.

13. I do not also find any merit in the contention of the respondents that the petitioners cannot challenge the promotions of respondents 5 to 18 on the ground that no vacancies reported to the PSC has been filled up by promotion. Although as in the decisions cited by respondents to 5 to 18 candidates included in the rank list have no indefeasible right to claim appointment to the posts for which the selection is made, they do have a right to challenge illegal action of the appointing authority in filling up the available vacancies which otherwise would have been available for appointment from the rank list in which they were also included, through an illegal mode of appointment not authorised by law. In fact a similar right is recognised by the Division Bench in Rajesh's case (supra) On the other hand, in Ext.P10 judgment a Division Bench has already upheld Ext.P9 judgment by which challenge against similar filling up of posts against the Cooperative Societies Rules have found favour with

a Single Judge. The reliance on Virender Singh Hooda's case (supra) is misplaced since the fact situation in that judgment did not contain reference to a rule similar to Rule 14 of the Kerala Public Service Commission Rules of Procedure which permits the PSC to advise candidates for all vacancies reported and pending before them and the vacancies which may be reported for the period during which the ranked list are kept alive. So also, Ext.R5(a) judgment would not come to the assistance to the respondents 5 to 18 since the same only records the submission of the 3rd respondent Bank that no vacancies reported to the PSC would be filled up for promotion. That judgment would not give the 3rd respondent any right to fill up posts otherwise than through a valid mode of appointment authorised by the Rules. The 3rd respondent cannot adopt for itself any feeder category rules contrary to the staff pattern approved in Appendix III of the Rules. In this case, since the post of Part time/Contingency

employees were included in the staff pattern by amending Appendix III only on 20.11.2003, the Bank could not have validly adopted any feeder category Rules making Part Time/Contingency employees as feeder category for promotion to any higher posts before that date. Therefore, any promotion of Part Time/Contingency employees prior to 20.11.2003 as Peon/Watchman in the 3rd respondent Bank is clearly illegal and unsustainable and those posts should have been reported for advice by the PSC from the rank list dated 31.1.2003.

14. However, it is not in dispute before me that respondents 13 to 18 were promoted after Ext.P4 amendment on 20.11.2003. Therefore, their promotion to those six posts cannot be validly challenged by the petitioners. But I make it clear that it is for the 3rd respondent Bank to decide whether it is the respondents 13 to 18 or others who were promoted earlier, who are entitled to occupy those posts because after 20.11.2003, respondents 5 to 12, whose appointments prior to

that date though illegal, would be entitled to stake a claim for promotion to vacancies which arose on or after 20.11.2003 by virtue of their seniority in the feeder category once their earlier promotions are declared to be illegal. This question I leave open for the parties to agitate appropriately.

15. In the result, I declare that promotions given to Part Time/Contingent employees prior to 20.11.2003 are not valid in law and therefore all those vacancies which were filled up prior to 20.11.2003 are available for filling up by appointment of persons from the rank list dated 31.1.2003. As I have already noted, in W.P(C). No.1934/2006 this court had directed the 3rd respondent to report 14 vacancies to the PSC. Therefore, there would be a direction to revert such number of Peons/Watchmen occupying posts which were filled up by promotion from among Part Time/Contingency employees prior to 20.11.2003. since admittedly respondents 5 to 12 have been

promoted prior to 20.11.2003 it can safely be presumed that those vacancies were 8 in number. Therefore there would be a direction to the 4th respondent to advise 8 candidates from the rank list dated 30.1.2003 for appointment to the post of Peon/Watchman in the 3rd respondent Bank in accordance with law within one month from the date of receipt of a copy of this judgment. The other 6 vacancies out of the 14 vacancies reported as per direction of this court would stand cancelled. However, I make it clear that the 3rd respondent shall take a decision as to which among the respondents 5 to 18 have to be reverted to accommodate those advised by the PSC, in accordance with law, which shall also be taken within one month from the date of receipt of a copy of this judgment. W.P(C).Nos.36604/04, 27491/05 and 1934/2006 are allowed as above, but without costs. W.P(C).No. 11681/2007

This writ petition is filed by the 9th respondent in W.P(C).Nos.36604/2004 27491/2005 and

1934/2006 after these writ petitions were heard and judgments were reserved. In this writ petition, apparently taking a cue from what transpired during arguments in those cases, the petitioner challenges note 2 of Ext.P1 notification dated 26.10.1999 pursuant to which the rank list dated 30.1.2003 was prepared, whereby it is stipulated that advise would be made to all vacancies which may be reported during the currency of the list in addition to these vacancies mentioned in the notification. I am of opinion that it is too late in the day to come up with such a challenge. The writ petition suffers from the vice of unexplained delay and laches in so far as Ext.P1 notification dated 26.10.1999 is being challenged almost 6 ½ years after the same is published and no explanation is even offered for the delay. In any event, in view of Rule 14 of the Kerala Public Service Commission Rules of Procedure, which Rules have been held to be having statutory force, and is not under challenge before me, the challenge is

unsustainable on merits also, which I have adverted to in the course of discussing the arguments in the other three writ petitions. Therefore, I do not find any merit in this writ petition and the same is therefore dismissed in limine.

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Sd/-
S.SIRI JAGAN, JUDGE

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P.A. to Judge.